

REMARKS

Reconsideration and withdrawal of the requirement for restriction are respectfully requested in view of the remarks herewith.

The May 15, 2007, Office Action required an election under 35 U.S.C. §121 from among two Groups. In response, Applicants provisionally elect the invention of **Group II**, claim 2, drawn to a crystal of mammalian glucokinase. This election is made *with traverse* and without prejudice to Applicants' right to file a divisional application directed to the non-elected subject matter. Applicants disagree with the Examiner's reasoning that restriction is required. Applicants respectfully urge that the Restriction Requirement does not establish that searching all the inventions would constitute an undue burden to the Patent Office. Moreover, Applicants urge that the Restriction Requirement is contrary to public policy. Accordingly, Applicants submit that the Restriction Requirement is improper and should be withdrawn or at least modified.

MPEP § 803 lists two criteria for a proper restriction requirement: first, the invention must be independent or distinct and, second, searching the additional invention must constitute an undue burden on the Examiner if restriction is not required. The MPEP directs the examiner to search and examine an entire application "[i]f the search and examination of an entire application can be made without serious burden...even though it includes claims to distinct or independent inventions." *Id.*

Neither of the two requirements for restriction is present. First, there are no independent or distinct inventions. Applicants' invention is directed to crystals of mammalian glucokinase, wherein the crystals are either unbound or bound to a ligand. As seen in both claim 1 of Group I and claim 2 of Group II, the same unit cell dimensions and crystal symmetry are recited. Thus, the Examiner's allegations that the Groups are distinct because they are of materially different design and do not overlap in scope are wrong. The present claims clearly represent a web of knowledge and continuity of effort that merits examination in a single application.

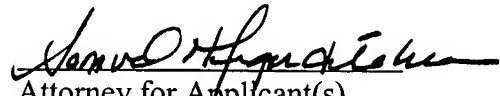
Second, there is no undue burden on the Examiner. Searching for unbound crystals of mammalian glucokinase (claim 2) would logically provide results for crystals bound with a ligand (claim 1), and vice versa, especially when both claims 1 and 2 recite the same unit cell dimensions and crystal symmetry language. The only way the Examiner would be burdened is if

restriction was maintained, the Examiner ran two redundant searches and came up with duplicative results. The risk of such inefficiency alone should prompt the Examiner to rescind the requirement.

Finally, the Examiner's actions are contrary to public policy. That is, restricting the claims in the manner suggested in the Restriction Requirement, and applying the Examiner's reasons for it, constitutes an undue burden to Applicants as well as to the public. The cost of prosecuting and maintaining additional patents is unreasonable in view of the fact that the two Groups are so closely related. Further, the public is inconvenienced as they will not know whether or not Applicants will file divisional applications to the remaining subject matter.

Accordingly, in view of the foregoing, reconsideration and withdrawal of the restriction requirement are respectfully requested. No fee is believed required for consideration of this paper. If any fee is deemed necessary, authorization is given to charge the amount of any such fee to Deposit Account No. 08-2525.

Respectfully submitted,


Attorney for Applicant(s)
Samuel H. Megerditchian
(Reg. No. 45,678)
340 Kingsland Street
Nutley, NJ 07110
Telephone (973) 235-4391
Telefax: (973) 235-2363

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